IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICITON

WRIT PETITION NO.147 OF 2007

M/s.Indiana Conveyors Ltd. .. Petitioner.

Versus

The Union of India & Ors. .. Respondents.

Mr.Sridharan with Mr.Prakash Shah with Mr.Vishwanathan i/by PDS Legal for the petitioner.

Mr.S.M. Shah with Mrs.Neeta Masurkar for the respondents.

CORAM : DR.S. RADHAKRISHNAN, &
J.P. DEVADHAR, JJ.

DATED : 14TH FEBRUARY, 2007.

P.C. :

1. Rule. Rule made returnable forthwith.

2. By consent of the parties, taken up for final hearing. The learned counsel for the respondents waive service.

3. Heard learned counsel for the petitioner and the learned counsel for the respondents.

4. The learned counsel for the petitioner states that though the petitioner challenges the order in original dated 23rd December, 2004 and the

order passed by the appellate authority dated 3rd August, 2006, the petitioner is restricting the challenge only with regard to the order in original. In asmuch as the main contention of the petitioner is that the original show cause notice issued to the petitioner did not raise any issue with regard to counting of deemed exports and also the issue of fulfilment of average export obligation, whereas the order in original in para 8 deals with the issue with regard to 'without counting the deemed export' and also 'the average export obligation'. The contention of the learned counsel for the petitioner is that if this was indicated in the show cause notice, the petitioner would have been able to satisfy the authorities that even without the deemed export, the petitioner has actually fulfilled all the export obligations.

4. Under the aforesaid facts and circumstances of the case and admittedly the show cause notice did not raise the above issues. Though the petitioner was afforded an opportunity of personal hearing, he was not put to notice with regard to the aforesaid issues in the said show cause notice.

5. Hence, on this limited ground, we are inclined to quash and set aside the order in

original dated 23rd December, 2004 and remand the matter back to the Joint Director General of Foreign Trade to decide the entire issue afresh after affording an opportunity of personal hearing to the petitioner.

6. Rule is made absolute accordingly with no order as to costs.

(DR.S. RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)